UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/531,162	04/12/2005	Peter Zatloukal	109909-141790	3236

25943   7590   04/09/2008
SCHWABE, WILLIAMSON & WYATT, P.C.
PACWEST CENTER, SUITE 1900
1211 SW FIFTH AVENUE
PORTLAND, OR 97204

EXAMINER
ALI, FARHAD

ART UNIT	PAPER NUMBER
2146	

MAIL DATE	DELIVERY MODE
04/09/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	10/531,162	ZATLOUKAL ET AL.
	Examiner	Art Unit	
	FARHAD ALI	2146	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS,
WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on _07 January 2008_.

2a) ☒ This action is **FINAL.**   2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) _1-3,5-14,16-20,29-31 and 33_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) _1-3,5-14,16-20,29-31 and 33_ is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All b) ☐ Some * c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage
         application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

2.   Claims 1-2, 6-8, 10-11, 17-19, 29-30, and 33 are rejected under 35 U.S.C. 103(a)

as being unpatentable over Alperovich et al. (US 6,298,247 B1), hereinafter Alperovich.

Claim 1

Alperovich teaches in a mobile client device, a method of operation comprising

(Column 2 Lines 30-35, "a mobile station (MS) 100 which may represent a landline

phone, portable station, a hand-held station, a hands-free station or a vehicle-

installed station for use in a wireless telecommunications network"):

        first providing, by the mobile client device, a first audio signal at a first audio

volume level to a user;

        determining by the mobile client device, the first audio volume level at which the

mobile client device is being utilized by the user for the first audio signal; and

        second providing, by the mobile client device, to the user a second audio signal

at a second audio volume level, the second audio volume level being based at least in

part on the first audio volume level initially; and

        while providing the first and second audio signals, increasing, by the mobile client

device, the second audio volume level from the initial volume level, the increased

second audio volume level being different from the first audio volume level **(Column 3 Lines 39-42, "VC1402 may perform volume control function by performing selected filter gain on primary audio signal 406 based on secondary audio signal 408" and See figure 3, "Increase volume command or Decrease volume command").**

Alperovich does not specifically disclose <u>incrementally increasing the second audio volume level</u>, however it would have been obvious to one of ordinary skill in the art at the time of invention to implement this feature. In order for the user to increase the audio volume level, the user must use a button which sends a signal to the device causing it to incrementally increase the volume a predetermined amount. In the applicants system where the control of the volume is to be carried out by the device itself, it would have been obvious to one of ordinary skill in the art to modify the device to simply automate this feature to increment the volume to the desired level.

Claim 2

Alperovich teaches the method of claim 1, wherein said determining comprises the mobile client device determining a first audio volume level at which the mobile client device is being utilized by a user for a first audio signal corresponding to music associated with output of at least one of an MP3 player and a radio **(Column 3 Lines 29-34, "primary audio signal 406 is the signal resulting from radio signals received by MS 400 from a remote base station system")** included with the mobile client device **(Column 3 Lines 39-42, "VC1402 may perform volume control**

function by performing selected filter gain on primary audio signal 406 based on
secondary audio signal 408”).

Claim 6

Alperovich teaches the method of claim 1, wherein said incrementally increasing
comprises incrementally increasing the second audio volume level by a selected one of
a constant increment and an increasing increment **(Column 3 Lines 39-42, “VC1402
may perform volume control function by performing selected filter gain on
primary audio signal 406 based on secondary audio signal 408” and See figure 3,
“Increase volume command or Decrease volume command”)**.

Claim 7

Alperovich teaches the method of claim 1, wherein said determining comprises
the mobile client device determining the first audio volume level measured as an audio
power level **(See Figure 3, “Measurement report (db)”)**.

Claim 8

Alperovich teaches the method of claim 7, wherein said determining a comprises
the mobile client device determining the first audio volume level measured as at least
one of volts, watts, and decibels **(See Figure 3, “Measurement report (db)”)**.

Claim 10

Alperovich teaches the wireless mobile phone comprising **(Column 2 Lines 30-35, "a mobile station (MS) 100 which may represent a landline phone, portable station, a hand-held station, a hands-free station or a vehicle-installed station for use in a wireless telecommunications network")**:

a first audio resource, the first audio resource equipped to provide a first audio signal at a first audio volume level at which the mobile phone is being utilized by a user for the first audio signal; and

a second audio resource, wherein the second audio resource is equipped to provide a second audio signal at a second audio volume level to the user, the second audio volume level being based at least in part on the first audio volume level initially, and

when the wireless mobile phone provides the first and second audio signals, increase the second audio volume level from the initial volume level, the increased second audio volume level being different from the first audio volume level.

(Column 3 Lines 39-42, "VC1402 may perform volume control function by performing selected filter gain on primary audio signal 406 based on secondary audio signal 408" and See figure 3, "Increase volume command or Decrease volume command").

Alperovich does not specifically disclose incrementally increasing the second audio volume level, however it would have been obvious to one of ordinary skill in the art at the time of invention to implement this feature. In order for the user to increase the audio volume level, the user must use a button which sends a signal to the device

causing it to incrementally increase the volume a predetermined amount. In the

applicants system where the control of the volume is to be carried out by the device

itself, it would have been obvious to one of ordinary skill in the art to modify the device

to simply automate this feature to increment the volume to the desired level.

Claim 11

Alperovich teaches the wireless mobile phone of claim 10, wherein the first audio

resource comprises at least one of an MP3 player and a radio **(Column 3 Lines 29-34,**

"primary audio signal 406 is the signal resulting from radio signals received by

MS 400 from a remote base station system").

Claim 17

Alperovich teaches the wireless mobile phone of claim 10, wherein second audio

resource is equipped to incrementally increase the second audio volume level by a

selected one of a constant increment and an increasing increment **(Column 3 Lines 39-**

42, "VC1402 may perform volume control function by performing selected filter

gain on primary audio signal 406 based on secondary audio signal 408" and See

figure 3, "Increase volume command or Decrease volume command").

Claim 18

Alperovich teaches the wireless mobile phone of claim 10, wherein the first and second audio volume levels <u>are</u> measured as audio power levels **(See Figure 3, "Measurement report (db)")**.

Claim 19

Alperovich teaches the wireless mobile phone of claim 18, wherein the audio power levels <u>are</u> measured in at least one of volts, watts, and decibels **(See Figure 3, "Measurement report (db)")**.

Claim 29

Alperovich teaches the mobile client device comprising **(Column 2 Lines 30-35, "a mobile station (MS) 100 which may represent a landline phone, portable station, a hand-held station, a hands-free station or a vehicle-installed station for use in a wireless telecommunications network")**:

a storage medium having stored therein a plurality of programming instructions **(Column 2 Lines 50-56, "ENMD 102 may also be communicably coupled to a memory module (MM) 108, such as a SIM or smart card, via an interface 110. MM 108 is a device within MS 100 for storing subscriber-related information, including the subscriber's volume control data, and associated software supporting the volume control application")**, which when executed, the instructions cause the mobile client device to

<u>first provide a first audio signal at a first audio volume to a user,</u>

determine <u>the</u> first audio volume level at which the mobile client device is being utilized by <u>the</u> user for <u>the</u> first audio signal,

<u>second</u> provide a second audio signal at a second audio volume level to the user, the second audio volume level being based at least in part on the first audio volume level initially<u>, and</u>

<u>when the mobile client provides the first and second audio signals, increase the second audio volume level from the initial volume level, the increased second audio volume level being different from the first audio volume level;</u> and

a processor coupled to the storage medium to execute the programming instructions **(Column 3 Lines 39-42, "VC1402 may perform volume control function by performing selected filter gain on primary audio signal 406 based on secondary audio signal 408" and See figure 3, "Increase volume command or Decrease volume command")**.

Alperovich does not specifically disclose <u>incrementally increasing the second audio volume level</u>, however it would have been obvious to one of ordinary skill in the art at the time of invention to implement this feature. In order for the user to increase the audio volume level, the user must use a button which sends a signal to the device causing it to incrementally increase the volume a predetermined amount. In the applicants system where the control of the volume is to be carried out by the device itself, it would have been obvious to one of ordinary skill in the art to modify the device to simply automate this feature to increment the volume to the desired level.

Claim 30

Alperovich teaches the mobile client device of claim 29, wherein <u>the first audio</u>

<u>signal corresponds</u> to music associated with output of at least one of an MP3 player and

a radio **(Column 3 Lines 29-34, "primary audio signal 406 is the signal resulting**

from radio signals received by MS 400 from a remote base station system")

included with the mobile client device **(Column 3 Lines 39-42, "VC1402 may perform**

volume control function by performing selected filter gain on primary audio

signal 406 based on secondary audio signal 408").

Claim 33

Alperovich teaches the mobile client device of claim 29, wherein <u>the</u> first audio

volume level <u>is</u> measured as <u>an</u> audio power level **(See Figure 3, "Measurement**

report (db)").

3.   Claims 5 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Alperovich et al. (US 6,298,247 B1), hereinafter Alperovich, in view of Goebel (US

2004/0105538 A1).

Claim 5

Alperovich teaches the method of claim <u>1</u>, wherein said incrementally increasing

comprises incrementally increasing the second audio volume level to a <u>pre-determined</u>

audio volume level limit **(Column 3 Lines 39-42, "VC1402 may perform volume**

control function by performing selected filter gain on primary audio signal 406

based on secondary audio signal 408" and See figure 3, "Increase volume

command or Decrease volume command").

Alperovich does not specifically disclose the audio volume level limit <u>above which</u>
<u>hearing damage is likely to occur.</u>

Goebel teaches "After receiving a signal from the evaluation circuit 8, the
computer unit 21 automatically reduces the volume of the ear piece 2. This reliably
avoids damage to the hearing of the operator."

It would have been obvious to one of ordinary skill in the art at the time of
invention to incorporate the teachings of Goebel's telephone with Alperovich's method
for automatic volume control. Alperovich inherently teaches having a volume limit and
Goebel teaches a method of reducing volume in order to prevent damage to the hearing
of the operator. It would have been obvious to one of ordinary skill in the art to set the
volume limit at a level that would reduce danger of causing hearing damage to the
operator, as doing so would ensure that the user will maintain the ability to further use
the device as intended.

Claim 16

Alperovich teaches the wireless mobile phone of claim <u>10</u>, wherein the second
audio resource <u>is</u> equipped to incrementally increase the second audio volume level to
<u>a pre-determined audio volume level limit</u> **(Column 3 Lines 39-42, "VC1402 may**

perform volume control function by performing selected filter gain on primary

audio signal 406 based on secondary audio signal 408" and See figure 3,

"Increase volume command or Decrease volume command").

Alperovich does not specifically disclose the audio volume level limit <u>above which</u>

<u>hearing damage is likely to occur.</u>

Goebel teaches "After receiving a signal from the evaluation circuit 8, the

computer unit 21 automatically reduces the volume of the ear piece 2. This reliably

avoids damage to the hearing of the operator."

It would have been obvious to one of ordinary skill in the art at the time of

invention to incorporate the teachings of Goebel's telephone with Alperovich's method

for automatic volume control. Alperovich inherently teaches having a volume limit and

Goebel teaches a method of reducing volume in order to prevent damage to the hearing

of the operator. It would have been obvious to one of ordinary skill in the art to set the

volume limit at a level that would reduce danger of causing hearing damage to the

operator, as doing so would ensure that the user will maintain the ability to further use

the device as intended.

4.   Claims 3, 9, 12-14, 20, and 31 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Alperovich et al. (US 6,298,247 B1) hereinafter Alperovich in view of

Alberth, Jr. et al. (US 6,351,653 B1) hereinafter Alberth.

Claim 3

Alperovich does not specifically disclose the method of claim 1, wherein said

<u>second</u> providing comprises the mobile client device providing <u>the</u> second audio signal

corresponding to a ring tone associated alert for at least a selected one from the grouop

consisting of an incoming call, a received indication of a text message, and a wireless

mobile phone system utilities warning.

Alberth teaches in Column 7-8 Lines 62-4, "FIG. 6 is a flowchart for using

alternate alarms when a page is detected. In Step 610, the cellular telephone detects a

page signal from the radio 120. In Step, 620, the control circuitry 205 determines

whether the cellular telephone 110 has a cellular phone call. In Step 630, if there is a

cellular call, a first alarm is activated. The first alarm may be selected by the user and

may alert the user with tones, vibrations, lights, and other means. The first alarm has a

low volume or other adjustments to compensate for the close proximity of the cellular

telephone 110 to the user".

It would have been obvious at the time of the invention to one of ordinary skill in

the art to modify Alperovich's Method and Apparatus for Automatic Volume Control to

work Alberth's Cellular Telephone which teacher Simultaneous Radio and Cellular

Communications. The inclusion of Alperovich's Method and Apparatus for Automatic

Volume Control would allow the Cellular Telephone to operate more effectively and

allow for more features that would be useful to the user.

Claim 9

Alperovich does not specifically disclose the method of claim 1, wherein said <u>first and second</u> providing comprises the mobile client device mixing said first and second audio signals.

Alberth teaches in FIG. 3 #340 and 350 "Combine radio downlink signal and cellular downlink signal into combined audio signal" and "Convey combined audio signal to speaker" respectively.

It would have been obvious at the time of the invention to one of ordinary skill in the art to modify Alperovich's Method and Apparatus for Automatic Volume Control to work Alberth's Cellular Telephone which teacher Simultaneous Radio and Cellular Communications. The inclusion of Alperovich's Method and Apparatus for Automatic Volume Control would allow the Cellular Telephone to operate more effectively and allow for more features that would be useful to the user.

Claim 12

Alperovich does not specifically disclose the wireless mobile phone of claim 10, wherein the second audio resource comprises an audio resource equipped to receive a delivery of a message alert to the user.

Alberth teaches in Column 7-8 Lines 62-2, "FIG. 6 is a flowchart for using alternate alarms when a page is detected. In Step 610, the cellular telephone detects a page signal from the radio 120. In Step, 620, the control circuitry 205 determines whether the cellular telephone 110 has a cellular phone call. In Step 630, if there is a

cellular call, a first alarm is activated. The first alarm may be selected by the user and may alert the user with tones, vibrations, lights, and other means").

It would have been obvious at the time of the invention to one of ordinary skill in the art to modify Alperovich's Method and Apparatus for Automatic Volume Control to work Alberth's Cellular Telephone which teacher Simultaneous Radio and Cellular Communications. The inclusion of Alperovich's Method and Apparatus for Automatic Volume Control would allow the Cellular Telephone to operate more effectively and allow for more features that would be useful to the user.

Claim 13

Alperovich does not specifically disclose the wireless mobile phone of claim 12, wherein the audio resource equipped to receive a delivery of a message alert comprises a ring tone generator.

Alberth teaches in Column 7-8 Lines 62-2, "FIG. 6 is a flowchart for using alternate alarms when a page is detected. In Step 610, the cellular telephone detects a page signal from the radio 120. In Step, 620, the control circuitry 205 determines whether the cellular telephone 110 has a cellular phone call. In Step 630, if there is a cellular call, a first alarm is activated. The first alarm may be selected by the user and may alert the user with tones, vibrations, lights, and other means").

It would have been obvious at the time of the invention to one of ordinary skill in the art to modify Alperovich's Method and Apparatus for Automatic Volume Control to work Alberth's Cellular Telephone which teacher Simultaneous Radio and Cellular

Communications. The inclusion of Alperovich's Method and Apparatus for Automatic

Volume Control would allow the Cellular Telephone to operate more effectively and

allow for more features that would be useful to the user.

Claim 14

Alperovich does not specifically disclose the wireless mobile phone of claim 12,

wherein the audio resource <u>is</u> equipped to receive a delivery of a message alert for at

least a selected one from the group consisting of an incoming call, a received indication

of a text message, and a wireless mobile phone system utilities warning.

Alberth teaches in Column 7-8 Lines 62-2, "FIG. 6 is a flowchart for using

alternate alarms when a page is detected. In Step 610, the cellular telephone detects a

page signal from the radio 120. In Step, 620, the control circuitry 205 determines

whether the cellular telephone 110 has a cellular phone call. In Step 630, if there is a

cellular call, a first alarm is activated. The first alarm may be selected by the user and

may alert the user with tones, vibrations, lights, and other means").

It would have been obvious at the time of the invention to one of ordinary skill in

the art to modify Alperovich's Method and Apparatus for Automatic Volume Control to

work Alberth's Cellular Telephone which teacher Simultaneous Radio and Cellular

Communications. The inclusion of Alperovich's Method and Apparatus for Automatic

Volume Control would allow the Cellular Telephone to operate more effectively and

allow for more features that would be useful to the user.

Claim 20

Alperovich does not specifically disclose the wireless mobile phone of claim 10 further comprising a mixer, the mixer equipped to mix the first and second audio signals.

Alberth teaches in FIG. 3 #340 and 350 "Combine radio downlink signal and cellular downlink signal into combined audio signal" and "Convey combined audio signal to speaker" respectively.

It would have been obvious at the time of the invention to one of ordinary skill in the art to modify Alperovich's Method and Apparatus for Automatic Volume Control to work Alberth's Cellular Telephone which teacher Simultaneous Radio and Cellular Communications. The inclusion of Alperovich's Method and Apparatus for Automatic Volume Control would allow the Cellular Telephone to operate more effectively and allow for more features that would be useful to the user.

Claim 31

Alperovich does not specifically disclose the mobile client device of claim 29, wherein the second audio signal corresponds to a ring tone associated alert for at least a selected one from the group consisting of an incoming call, a received indication of a text message, and a wireless mobile phone system utilities warning.

Alberth teaches in Column 7-8 Lines 62-2, "FIG. 6 is a flowchart for using alternate alarms when a page is detected. In Step 610, the cellular telephone detects a page signal from the radio 120. In Step, 620, the control circuitry 205 determines whether the cellular telephone 110 has a cellular phone call. In Step 630, if there is a

cellular call, a first alarm is activated. The first alarm may be selected by the user and may alert the user with tones, vibrations, lights, and other means").

It would have been obvious at the time of the invention to one of ordinary skill in the art to modify Alperovich's Method and Apparatus for Automatic Volume Control to work Alberth's Cellular Telephone which teacher Simultaneous Radio and Cellular Communications. The inclusion of Alperovich's Method and Apparatus for Automatic Volume Control would allow the Cellular Telephone to operate more effectively and allow for more features that would be useful to the user.

Response to Arguments

5.   Applicant's arguments directly below filed on 10/05/2007 have been fully considered but they are not persuasive.

Applicant argues:

In rejecting claim 1, the Examiner points to col. 3, lines 39-42 of Alperovich, and quotes the following from that passage: "VC 402 may perform volume control function by performing selected filter grain on primary audio signal 406 based on secondary audio signal 408." This and other passages of Alperovich describe a mobile device equipped to automatically adjust volume based on subscriber volume preferences. The subscriber volume preferences are determined by the device by observing a level of background noise and, simultaneously, a volume level selected by a user. In further use, when that background noise level is again observed by the mobile device, the

mobile device automatically increases or decreases the volume level based on the preference for that backgound noise level (see Figure 3, Step "Increase Volume Command"). In an embodiment illustrated by Figure 4 and described by the passage quoted by the Examiner, two audio signals are provided to the user, one of the signals being the user's own voice as detected by a microphone of the mobile device. In this embodiment, the volume level of the other audio signal is adjusted based on the volume level of the user's voice ("primary audio signal 406 based on secondary audio signal 408").

In response, Applicants have amended claim 1, overcoming the Examiner's rejection. Claim 1 now recites "while providing the first and second audio signals, incrementally increasing, by the mobile client device, the second audio volume level from the initial volume level, the increased second audio volume level being different from the first audio volume level." As recited, the second audio volume level of the second signal is different from the first audio volume level of the first signal after the increase.

In contrast, Alperovich teaches increasing/decreasing the primary audio signal volume to be identical to the secondary audio signal (user's voice) volume. Thus, while the volumes of the two signals may initially have been different, they are increased or decreased to be the same. After the volume increase/decrease, the two signal volumes in Alperovich are identical. Thus, Alperovich does not teach, in as complete of detail as is claimed, the incremental increasing recited by amended claim 1.

Examiner disagrees. Alperovich does not teach increasing/decresing the primary audio signal volume to be identical to the secondary audio signal volume. The examiner asserts that the applicant is mistaken. Alperovich discloses in the summary of the invention that the method "automatically adjusting the volume level of the audio signal to the preferred volume level". Furthermore, in Column 3 Lines 38-46, Alperovich further describes the method where "The gain of the desired signal and the gain of the undesired noise are adjusted according to the user's preferences". Examiner asserts that Alperovich does not disclose or even suggest that these two volume levels should be identical.

6.   Applicant's arguments shown below with respect to claims 1, 5, and 16 have been considered but are moot in view of the new ground(s) of rejection.

Applicant arguments considered moot:

Further, Alperovich provides no suggestion of the incremental increasing recited by of claim 1. Alperovich bases the volume of the primary signal on the volume of the user's voice because it serves Alperovich's purpose of automatically providing a good volume level in light of background noise. Alperovich is solely concerned with distinguishing mobile device audio signals from background noise, not with distinguishing mobile device audio signals from each other. Claim 1, in contrast, is concerned in part with distinguishing audio signals of the mobile device from each other

(See page 2, lines 8-12 of Applicant's Specification). Thus, one of ordinary skill simply would not find any reason in Alperovich to modify Alperovich to practice the incremental increase recited by claim 1.

Also, claims 5 and 16 are patentable over Alperovich for additional reasons. Claims 5 and 16 recite "wherein said incrementally increasing comprises incrementally increasing the second audio volume level to a pre-determined audio volume level limit above which hearing damage is likely to occur." While Alperovich may inherently teach some sort of maximum volume of the mobile device above which volume increase is mechanically impossible, nothing in Alperovich teaches or suggests limiting volume increases based on potential hearing damage. In fact, by increasing volume only to the volume level of the user's voice or a previous volume level selected by the user, Alperovich teaches away from the need for any sort of pre-determined volume level limit.

Conclusion

7.   Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to FARHAD ALI whose telephone number is (571)270-

1920. The examiner can normally be reached on Monday thru Friday, 7:30am to

5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Jeffrey C. Pwu can be reached on (571) 272-6798. The fax phone number

for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Farhad Ali/
Examiner, Art Unit 2146

/Jeffrey Pwu/
Supervisory Patent Examiner, Art Unit 2146